

- IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

expert report. Although the parties agreed that Expert Reports are not admissible and may not be given to the jury, the City contends Exhibit 37 which is in essence its first expert report ought be admitted. .

4. The validation study is not admissible for the truth of the hearsay statements. As the magistrate judge recognized in granting Plaintiffs Motion in Limine #2, neither defense expert Dr. Gebhardt nor Dr. Jacobs can offer admissible testimony as to the intentions and concerns of the City in adopting or seeking to utilize this test. (ECF 421 Order on Motions in Limine).
5. For the same reasons, defendant cannot attempt to achieve this purpose indirectly by seeking to utilize or cite Exhibit 37 as evidence of the truth of the statements contained therein as to CFD goals or concerns.
6. Therefore, plaintiffs respectfully request this Honorable Court pursuant to F.R.C.P 72 to overturn the order permitting Exhibit 37 into evidence. Alternatively, should the Court determine that this document may be admitted for limited purpose, plaintiffs respectfully request this Court expressly limit the use of this report to preclude defendant from arguing or suggesting that this report contains admissible evidence as to the goals or intention or actions of CFD in seeking, adopting or utilize this test. Dr. Gebhardt may of course testify as to her actions and her report but the document itself with its multiple layers of hearsay ought not be admitted into evidence and provided the jury.
7. With great respect for Magistrate Judge Cole and his work in this matter, plaintiffs respectfully suggest that this ruling be overturned. As in all rulings on motions in limine, this order is of course subject to revision by this Court at trial. Farfaras vs Citizens Bank & Trust, 433 F.3d 558 (7th Cir. 2013). Plaintiffs respectfully suggest that in what may be

a lengthy trial, permitting the defense to rely upon unsworn hearsay statements of a test vendor would be improper. .

- 8.** Defendant City did amend its Rule 26(a) disclosures from time to time and cited no reason or justification for its failure to identify these persons as persons on whom it intended to rely to support its defense until long after the close of discovery other than that their names were disclosed in other contexts.

Conclusion

For the reasons stated herein, Plaintiffs respectfully request this Honorable Court modify the ruling of the Magistrate Judge and to sustain Plaintiffs Objections to Defense Exhibit 37 or, in the alternative, to limit admission of such Exhibit so as to preclude its use as evidence of the goals, intentions or actions of CFD officials or employees .

Respectfully submitted

____s/Susan P. Malone

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Susan P. Malone
smalonelaw@sbcglobal.net
20 N. Clark Street, Suite 1725
Chicago, IL 60602
(312) 726-2638

Marni Willenson
marni@willensonlaw.com
Willenson Law, LLC
542 S. Dearborn Street, Suite 610
Chicago, IL 60605
(312) 546-4910

David Borgen (Cal. Bar No. 099354)
dborgen@gdblegal.com
Michael Caesar (Cal. Bar No. 280548)
mcaesar@gdbhlegal.com

Goldstein Borgen Dardarian & Ho
300 Lakeside Drive, Suite 10000
Oakland, CA 94612
(510) 763-9800